

# The Validity of Handwritten Wills

*Amundsen Davis Estate Planning Alert*  
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You may have read in the news, that Aretha Franklin reportedly left holographic, or handwritten, wills in her home. Originally, it was thought that Ms. Franklin died intestate (or without a last will and testament). When an individual dies intestate, the state in which the person resides at the time of their death writes the will for the individual through state laws. The results of intestate succession may not be what most people expect. In Missouri and Illinois, for example, if a person is married, half their estate goes to the spouse, but the other half goes to any children. These rules differ by state.

In any event, Ms. Franklin's estate was originally opened as an intestate estate. So, what effect do these handwritten wills have? It depends upon Michigan law whether or not the wills are accepted. If this happened in Missouri or Illinois, then these three wills would not be accepted. Roughly half of the states recognize holographic wills and will admit a holographic will to probate. While the number of witnesses varies, the admission of a holographic will to probate requires disinterested witnesses to testify that the will is in the handwriting of the person who wrote it, also known as the testator. As of November 2010, the states that permit holographic wills to probate include Alaska, Arizona, Arkansas, California, Colorado, Idaho, Kentucky, Louisiana, Maine, Michigan, Mississippi, Montana, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia and Wyoming.

Other states do **not** accept holographic wills in any form, even as a foreign will or for active military members. These states are Alabama, Delaware, Florida, Georgia, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, New Hampshire, Ohio, Oregon, Rhode Island, Vermont and Wisconsin.

Wills are relatively inexpensive to prepare, usually less than \$1500 for wills and powers of attorney. However, if you do not have a will, the result is exponentially more expensive, in the \$5,000 to \$10,000 at a minimum range. In most states, wills require a written instrument that is signed by the testator as well as two witnesses, and for good measure, a notary public.

The witnesses are key to the validly prepared will. I once had to tell a client that because the decedent did not sign his will in the presence of two witnesses, it was not going to be validated in a Missouri court. Most people may not know this, but when you probate a will, unless the will is notarized, you have to go find

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the witnesses and have them sign what is called a commission.

The lesson you can learn from Aretha Franklin is to R-E-S-P-E-C-T yourself and hire an attorney to help ensure your final wishes will be honored by the courts and your family.

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